Internal Revenue Service

memorandum

CC:TL-N-2245-89
TS:VWATERS

date: 23 MAR 1989

to: District Counsel San Francisco W:SF

from: Director, Tax Litigation Division CC:TL

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subject: Assessment of Tax Pursuant to Settlement of Partnership Items - I.R.C. § 6230(a)(2)

This is in response to your December 15, 1988 request for tax litigation advice regarding the above-captioned subject matter.

ISSUES

1. Whether Form 870-P and Form 906 should contain a waiver of restrictions on the assessment and collection of any deficiency (and statutory interest on the deficiency) that would result from making the adjustment to partnership items consistent with the settlement of those items in light of the recent amendment to I.R.C. § 6230(a)(2)?

2. What procedure should the Service follow to assess the tax due to the settlement of the partnership items?

3. When may the Service assess the tax due to the settlement of the partnership items?

CONCLUSIONS

1. Where a Form 906 or Form 870-P is executed, partnership items become nonpartnership items. Under section 6230(a)(2), as amended, partnership items that have been converted to nonpartnership items by a settlement agreement are no longer governed by the subchapter B deficiency proceedings. As a result of the amendment to section 6230(a)(2), there is no technical requirement for a waiver of the restrictions on assessment and collection relating to section 6213(d) because the deficiency procedures no longer apply. The waiver in Form 870-P, however, relates to the restrictions in section 6225. Even prior to the amendment to section 6230(a)(2), the waiver language relating to section 6225 was not technically required, at least where there was a

comprehensive settlement of all partnership items. (b)(7)a, (b)(7)e [redacted].

2. Because the deficiency proceedings no longer apply, the Service can immediately assess the tax due by means of a computational adjustment. The Service should send a Notice of Computational Adjustment to the partner reflecting the application of the settlement of the partnership items to his return for the year at issue.

3. The Service may assess the tax due to the settlement of the partnership items as soon as the agreement has been signed by the taxpayer and countersigned by the Service. Under section 6229(f), the Service has at least one year after the items become nonpartnership items to make the assessment. Section 6229(f) was recently amended to provide for extensions beyond the one year period.

DISCUSSION

Section 6230(a)(1) provides that the deficiency procedures of sections 6211 through 6216 do not apply to the assessment or collection of any computational adjustment. A computational adjustment is defined as a change in the tax liability of a partner which properly reflects the treatment of a partnership item as determined pursuant to the partnership procedures. I.R.C. § 6231(a)(6).

The Code excepts from application of the above-mentioned general rule any deficiency attributable to affected items which require partner level determinations or certain items which have become nonpartnership items. I.R.C. § 6230(a)(2). Partnership items become nonpartnership items for a particular partner as of the date any of the following events occur:

1. The Service sends a notice to the partner stating that such items will be treated as nonpartnership items. I.R.C. § 6231(b)(1)(A).

2. The partner files suit under section 6228(b) after the Secretary fails to allow an administrative adjustment request with respect to any of the items. I.R.C. § 6231(b)(1)(B).

3. The Service and the partner enter into a settlement agreement

with respect to such items. I.R.C. § 6231(b)(1)(C).

4. The Service fails to timely notify the partner of the commencement or conclusion of the partnership proceedings, or the Service determines that treating an item as a partnership item would interfere with enforcement. I.R.C. § 6231 (b)(1)(D).

Generally, the tax treatment of items that become nonpartnership items is determined under the regular audit, deficiency, and refund procedures instead of the Tax Equity and Fiscal Responsibility Act ("TEFRA") procedures. The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA"), however, amended section 6230(a)(2)(ii) to provide that the deficiency proceedings do not apply to partnership items which are converted because of a settlement agreement. Accordingly, when partnership items become nonpartnership items by a settlement agreement, the partnership audit provisions continue to apply for purposes of assessment or collection of any computational adjustment.

In your memorandum, you suggested that since the items are now nonpartnership items, the restrictions of section 6225 do not apply and, therefore, the waiver language is no longer required on Form 870-P or Form 906. In general, TAMRA impacted the assessment and collection restrictions of section 6213 and did not affect the restrictions of section 6225. The waiver language contained in Form 870-P pertains to section 6225. We agree that the section 6225 waiver language is not required on Form 870-P or Form 906 where there is a complete settlement agreement (i.e., an agreement which resolves all the partnership items). However, it is unclear whether partial settlement agreements are sufficient to convert any partnership items to nonpartnership items. Because there are no litigated cases which resolve this issue, we recommend that the waiver language be retained in Form 870-P. In addition, we recommend that you add the section 6225 waiver language to any Form 906 specific matter closing agreements entered into in the future.

In light of this recent amendment to section 6230(a)(2)(ii), statutory notices need not be issued prior to an assessment in accordance with a settlement agreement. We agree with your position that the Service can make a computational adjustment reflecting the terms of the settlement agreement. The Service is authorized to make the computational adjustment immediately after the settlement agreement is executed. I.R.C. § 6231(b)(1)(C) provides:

> (b) Items Cease To Be Partnership Items in Certain Cases.-
>
> (1) In general.-For purposes of this subchapter, the partnership items of a partner for a partnership taxable year shall become nonpartnership items as of the date-
>
> . . . .
>
> (C) the Secretary enters into a settlement agreement with the partner with respect to such items[.]

Accordingly, the Service is authorized to send the taxpayer a Notice of Computational Adjustment immediately after the settlement agreement is executed.

As to your third issue, we agree with your conclusion that the assessment must be made within the statutory period provided by section 6229(f). Section 6229(f) provides that:

> If, before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for the partnership taxable year, such items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, the period for assessing any tax imposed by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. The period described in the preceding sentence (including any extension period under this sentence) may be extended with

respect to any partner by agreement entered into by the Secretary and such partner.

TAMRA provided an amendment to section 6229(f) to allow for extensions of the one year statutory period for making assessments. Prior to TAMRA, it was Service position that the one year period of assessment under section 6229(f) could not be extended because there was a litigation hazard that a Court would not have sustained our decision to extend the period of assessment beyond one year.

If you have any questions regarding this matter, please feel free to contact Vada Waters at (FTS) 566-3289.

MARLENE GROSS

By: _____
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